



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. BOX 1450  
ALEXANDRIA, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

HESLIN ROTHENBERG FARLEY & MESITI PC  
5 COLUMBIA CIRCLE  
ALBANY NY 12203

**COPY MAILED**

**JAN 30 2008**

**OFFICE OF PETITIONS**

In re Application of :  
Miller et al. :  
Application No. 09/286,043 :  
Filing Date: April 5, 1999 : Decision on Petition for  
Attorney Docket No.: 1634.001 : Patent Term Extension  
For: DATABASE SEARCH IN :  
DISTRIBUTED COMPUTER SYSTEM ON :  
PORTION OF REMOTE DATABASE :

The above-identified application has been forwarded to the undersigned for consideration on a petition for patent term extension entitled "Request to Recalculate Determination of Patent Term Extension Under 37 CFR 1.701(a)(3)," received on December 3, 2007. The petition is being treated under 37 CFR 1.181 and 37 CFR 1.701, as a petition for patent term extension.

The petition is GRANTED.

Petitioner argues that the patent should get a patent term extension because the Panel Remand is a decision in favor of applicants.

35 U.S.C. § 154(b) provides for patent term extension for appellate review, interference and secrecy order delays in applications filed on or after June 8, 1995 and before May 29, 2000, and, as amended by the "American Inventors Protection Act of 1999," enacted November 29, 1999, as part of Public Law 106-113, for those delays and others in applications filed on or after May 29, 2000

A Notice of Appeal was filed in the above-identified application on April 30, 2001. On July 16, 2002, the Board of Patent Appeals and Interferences (BPAI) remanded the application to the examiner in the above-identified application. Since the above-identified application was filed after June 7, 1995, there is no terminal disclaimer due to the issue of another patent claiming subject matter that is not patentably distinct from that under appellate review, and issuance of the application as a patent was delayed due to appellate review resulting in a remand by a panel of the BPAI to the Examiner, the patent to issue from the application is entitled to an extension of the patent term.<sup>1</sup> The

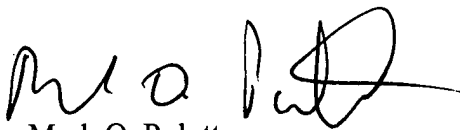
<sup>1</sup> Revision of Patent Term Extension and Patent Term Adjustment Provisions, 78 FR 21704, 21705 (April 22, 2004), 1282 Off. Gaz. Pat. Office Notices 100 (May 18, 2004) (final rule).

period of delay in the above-identified application is the period beginning on April 30, 2001, the date that the Notice of Appeal was filed and ending on July 16, 2002, the date of the remand by a panel of the BPAI, which is a final decision in favor of the applicant. Three years after the earliest effective filing date of the application is April 5, 2002. Accordingly, the period of extension is required to be reduced pursuant to 37 CFR 1.701(d)(1) by the amount of time prior to three years after the filing date of the application. As a result, the first period of extension is **103-days**, the period from April 5, 2002 to July 16, 2002, including the beginning and end dates.

After mailing of this decision, the above-identified application will be forwarded to Office of Publications for further processing. The patent, if issued, will include an indication that the patent term is extended by **103 days**.

Petitioner's deposit account has not been charged a petition fee.

Telephone inquiries with regard to this communication should be directed to Mark O. Polutta at (571) 272-7709.

A handwritten signature in black ink, appearing to read 'M O Polutta', is positioned above the printed name and title.

Mark O. Polutta  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of the Deputy Commissioner  
for Patent Examination Policy